

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1421 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYABEN NARANBHAI PANSURIYA

Versus

PATEL JETHALAL KARSHAN HIRPARA

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Appearance:

MR DU SHAH for Petitioner

MR SURESH M SHAH with Mehul Shah for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 11/12/97

ORAL JUDGEMENT

This Civil Revision Application under section 115 of Civil Procedure Code has been filed by the tenant against the order of Extra Asstt. Judge, Gondal, whereby the learned Judge upheld the order passed by the Civil Judge (JD) Dhoraji below Exh. 5 in R.C.S. No.301/95 and below Exh. 5 in Civil Misc. Application No.20/95 directing the petitioner-tenant to deposit the rent at

the rate of Rs.500/- per month.

2. Mr Mehul S Shah, learned Advocate appearing for the landlord respondent raised preliminary objections with respect to the maintainability of the present Civil Revision Application. He submits that the petitioner having failed in Revision before the Court below under the provisions of section 29(3) of the Bombay Rent (Hotel and Lodging House Rates Control) Act, 1947 (for short, 'the Act of 1947') cannot be permitted to avail remedy by way of second revision under section 115 of C.P.C. He relies on a decision of the Apex Court in the case of VISHESH KUMAR v. SHANTI PRASAD, reported in AIR 1980 SC 892, in the case of AUNDAL AMMAL v. SADASIVAN PILLAI, reported in AIR 1987 SC 203. He has referred to a decision of this Court, reported in AIR 1996 (1) GLH 606. He has also relied upon another unreported decision of this Court in CRA No.1257/94, decided on 22.11.1995.

3. In VISHESH KUMAR's case (supra), the Apex Court, considering the provisions of section 3 of U.P. Civil Laws (Amendment) Act, 1970 which provided remedy of revision to the Court of District Judge found that a mutually exclusive jurisdiction has been assigned to the High Court and the District Court within the terms of section 115 CPC. The Court held thus,

"To recognise a revisional power in the High Court over a revisional order passed by the District Judge would plainly defeat the object of the legislative scheme. The intent behind the bifurcation of jurisdiction - to reduce the number of revision petitions filed in the High Court would be frustrated. The scheme would, in large measure, lose its meaning. If a revision petition is permitted to the High court against the revisional order of the District Court arising out of a suit of a value less than Rs.20,000/- a fundamental contradiction would be allowed to invade and destroy the division of revisional power between the High Court and the District Court, for the High Court would then enjoy jurisdictional power in respect of an order arising out of a suit of a valuation below Rs.20,000/-. That was never intended at all."

In AUNDAL AMMAL's case (supra), the Apex Court, dealing with the provisions of sections 18 and 20 of the Kerala Buildings (Lease and Rent Control) Act of 1965, held that there is an implied prohibition or exclusion of second revision under section 115 of CPC to the High Court when

a revision has been provided under section 20 of the Act.  
The Court held thus -

"When section 18 (5) of the Act specifically states that "shall not be liable to be called in question in any Court of law" except in the manner provided under section 20, it cannot be said that the High Court which is a Court of law and which is a civil Court under the Code of Civil Procedure, under section 115 of the Code of Civil Procedure could revise again an order after revision under section 20 of the Act. That would mean there would be a trial by four Courts, that would be repugnant to the scheme manifest in the different sections of the Act in question. Public policy or public interest demands curtailment of law's delay and justice demands finality within quick disposal of case. The language of the provisions of Section 18 (5) read with section 20 inhibits further revision. The Courts must so construe."

In view of the aforesaid decisions of the Apex Court, it is not necessary to deal with other cases decided by this Court.

4. Mr D U Shah, learned Advocate appearing for the petitioner submits that the scope of section 115 of CPC is large and this Court has ample power to examine any error of jurisdiction committed by the Court subordinate to it. In alternative, he submits that this petition may be treated as Special Civil Application under Article 227 of the Constitution of India. It is submitted by Mr D U Shah that there is an error apparent on the face of record in the order passed by the lower Court.

5. So far as the first contention of Mr D U Shah is concerned, there is no substance therein as the Apex Court has very categorically held that when a remedy of revision is provided under the statute, a second revision under section 115 CPC is impliedly barred. I cannot permit the petitioner to convert this Civil Revision Application into Special Civil Application under Article 227 of the Constitution of India as this will amount to circumventing the provisions and also the law laid down by the Apex Court. The Apex Court in VISHESH KUMAR's case held that a petition under section 115 of CPC cannot be converted into an application under Article 227 of the Constitution of India, as these are separate distinct proceedings and one cannot be identified with the other.

6. In view of the aforesaid, I upheld the preliminary objections raised by Mr Mehul S Shah and hold that this Revision Application is not maintainable under section 115 of the Criminal Procedure Code. This Revision Application is accordingly rejected. Rule discharged. Interim relief is vacated.

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msp.